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## **Clause 4.6 Variation**

Height of Building at  
43 Station Street Wickham

## Document Control

Title: Clause 4.6 Variation to Height of Building  
Address: 43 Station Street Wickham NSW  
Job No.: 17NEW0156  
Client: Compass Housing Services

## Document Issue:

Issue	Date	Prepared by	Reviewed by
<b>Draft 1</b>	16.05.2019	Emily Allen	Stephen Barr
<b>Draft 2</b>	13.06.2019	Emily Allen	
<b>Revision 1</b>	06.09.2019	Emily Allen	Rebecca Johnston
<b>Revision 2</b>	13.09.2019	Emily Allen	Rebecca Johnston
<b>Revision 3</b>	18.11.2019	Emily Allen	Rebecca Johnston
<b>FINAL</b>	19.11.2019	Emily Allen	

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Signed,



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# 1 Introduction

This Clause 4.6 variation request has been prepared to support a development application for the proposed affordable housing development at 43 Station Street Wickham. Also known as Lot 1 of Deposited Plan 13187.

This Clause 4.6 variation has been submitted to assess the proposed non-compliance with the height of buildings standard, Clause 4.3, for the development in accordance with the requirements of Newcastle Local Environmental Plan 2012 (Newcastle LEP) which provides the following aims and objectives:

- (a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*
- (b) to allow reasonable daylight access to all developments and the public domain.*
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The height of building shown on the relevant Newcastle LEP Map HOB\_004FA is 24m. The height of building proposed is 26.530 metres.

Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant. The request must justify the contravention of the development standard by demonstrating under Newcastle LEP 2012 Clause 4.6(3) that:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards.



## 2 Site Description

The site is located at 43 Station Street Wickham, also known as Lot 1 of Deposited Plan 13187. The site contains a two storey attached dual occupancy. The site's topography is relatively flat with a slight fall to the south. There are three trees along the rear boundary and some non-native shrubs at the front.

The site is bound on three sides by neighbouring properties. To the east is a factory which is built against the shared boundary and to the north and west are residential dwellings. The south faces Station Street where the site has access from. Directly south of the site is the heavy rail corridor and Wickham Interchange. Further south is Hunter Street where currently works are occurring for the new Store building. The surrounding suburb to the north, east and west is a mix of uses from industrial, manufacturing, recreation and residential. The area has seen in recent time's new development occurring primarily for residential flat buildings with ground floor commercial spaces.

The site is well serviced in terms of public transport and services. The railway station and Wickham Interchange are directly across the road. The light rail allows the new occupants quick access to Hunter Street and the wide array of services available there. The proximity of the train line also provides access to many suburbs of Newcastle and connections through to the Central Coast and Sydney.



Figure 1: Aerial view of subject site (Sixmaps, 2019).

### 3 Proposed Development and Compliance with Newcastle Local Environmental Plan 2012

The proposal seeks to gain approval for a Residential Flat Building with Commercial space on the ground floor. The residential units will be used as affordable housing and managed by Compass Housing Services (Compass).

#### 3.1 Zone objectives

The site is located within a B4 Mixed use zone. The objectives of B4 Mixed Use zones are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

B4 zoning allows for a wide range of compatible land uses that centre around residential accommodation, recreation, commercial activities and education. The proposed building will provide affordable housing as well as a commercial space that has the potential to be used as a social enterprise for the residents of the building.

The building integrates residential with business in an area that is transforming into a mixed use residential and commercial precinct. This has been driven by the area's proximity to the heavy rail line, light rail and Newcastle CBD. The Newcastle Interchange is located a short walk from the building and the heavy rail line is directly south of the site. This provides the site with ample public transport opportunities and provides an ideal location for mixed use developments.

The commercial space would be appropriate for a range of future uses such as a café or retail run as part of a social enterprise or used as a community facility for the residents. Its inclusion is not expected to negatively impact the viability of neighbouring businesses but enhance the area through the diversity of business offerings. The nearby Hunter Street and Honeysuckle areas are main business, entertainment and residential hubs are unlikely to be impacted adversely by the inclusion of the commercial space.

It is considered that the proposed development is in accordance with objectives of this zone.



### 3.2 Maximum Height of Building imposed by Clause 4.3

Clause 4.3 of the LEP applies to development on the site as mapped in the Newcastle LEP 2012. Clause 4.3 states that:

*(1) The objectives of this clause are as follows:*

*(a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*

*(b) to allow reasonable daylight access to all developments and the public domain.*

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

On LEP Map HOB\_004FA the building height is 24m. The proposed building height is 26.530m which is to the top of the lift overrun. The lift overrun is not likely to be visible from many angles and won't be visible when looking from the ground up at most distances. The communal roof terrace is the most visible roof element.

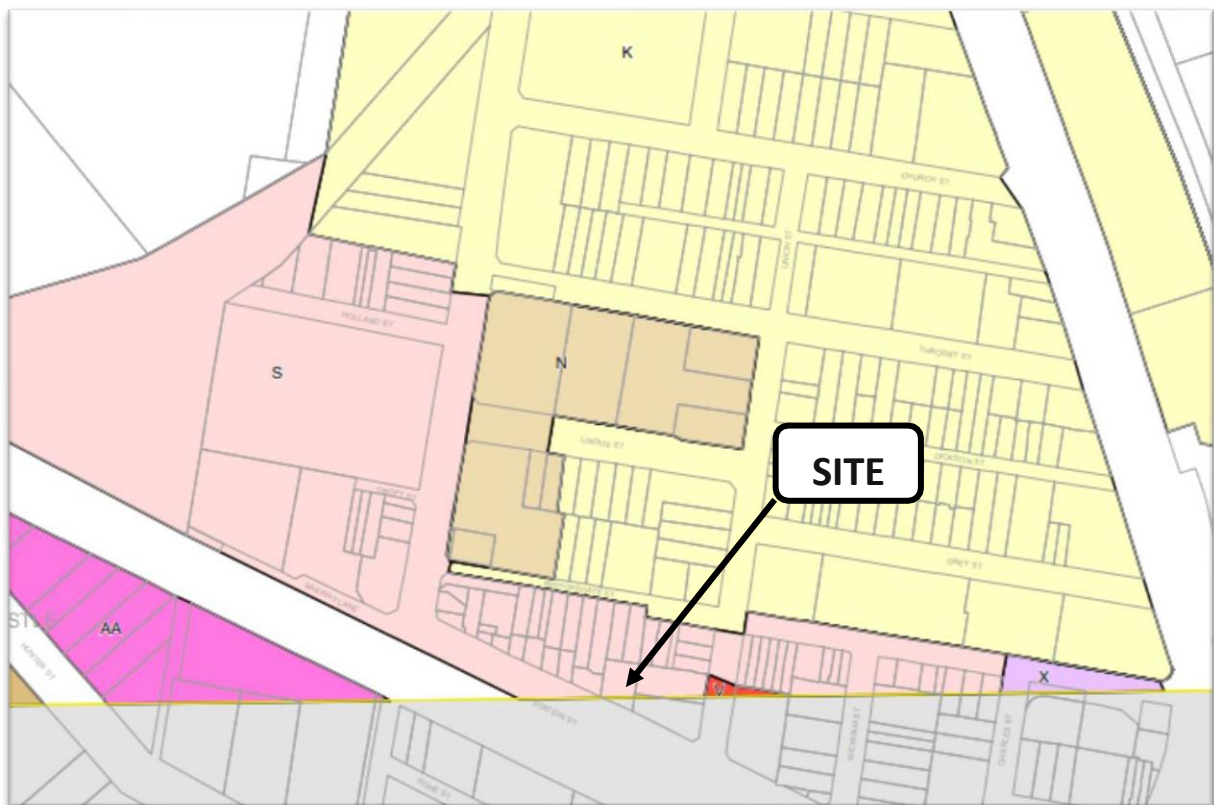


Figure 2: Section from the HOB\_004FA Map in the Newcastle LEP showing the building height (Newcastle LEP, 2012).



### 3.3 Objectives of the development standard

Under the Environmental Planning and Assessment Act 1979 a development standard is defined as:

***development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development.*

Consistency of the proposed development with the development standard and associated objectives of Clause 4.3 are a key consideration in determining whether to grant consent to a contravention of the development standard. The objectives of Clause 4.3 are outlined in sub clause (1):

- (a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*
- (b) to allow reasonable daylight access to all developments and the public domain.*

Notwithstanding the noncompliance of the development with the numeric development standard, being the height limit mapped in the Newcastle LEP 2012, the development is considered to meet the objectives of Clause 4.3. An assessment of this is within Section 4 of this report





## 4 Clause 4.6 - Exceptions to development standards

### 4.1 Objectives of Clause 4.6

Clause 4.6 of Newcastle LEP 2012 has the following objectives:

- (1) The objectives of this clause are as follows:*
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.3 is a development standard relating to the maximum building height for a development. Clause 4.6 provides flexibility in the application of this development standard, allowing for better and more consistent development outcomes.

The development is considered to be in the public interest as it supports the objects of the EPA Act. Namely, it supports:

- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (g) to promote good design and amenity of the built environment,*

The proposal will provide a building which has the ability to provide 16 new affordable houses, where there is currently only two homes provided in the form of an attached dual occupancy. The addition of 14 new homes on this lot promotes the orderly and efficient use of land by providing a higher yield in this location. It also allows for more people to be centrally located in employment provided in the Newcastle CBD, services and public transport networks. This is considered a positive use of this land.

The development is specifically for affordable housing with the inclusion of one commercial space. The development is directly increasing the amount of affordable housing in the area which meets this object. The development will be delivered and owned by an affordable housing provider who will be responsible for the ongoing maintenance, management and administration of all aspects of the development.

The architectural design of the building is of a high quality and sympathetic to the existing and developing streetscape. The comments from the Urban Design Consultative Group (UDCG) meeting on 21 March 2019 described the proposal as being *“skillfully articulated in form and carefully broken down with a combination of materials which would an attractive and sculptural addition to the streetscape”*. The UDCG was broadly supportive of the quality of the design and recognized its *‘potential to provide high quality, amenable accommodation’*. It is considered that the proposed design provides an attractive addition to the street which is in the public interest.

The attainment of the objects of the Act demonstrates that flexibility in the application of the maximum building height will enable the achievement of better outcomes for and from development in this instance. The objectives of clause 4.6 are also supported by the way in which the proposed development satisfies the considerations outlined in Clause 4.6(3) and following, outlined in Section 4.3 of this report.



## 4.2 Applicability of Clause 4.6

The development standard in Clause 4.3 is not expressly excluded from the operation of Clause 4.6. Clause 4.6(2) therefore gives Council the ability to grant development consent to the proposed development, despite the contravention of this development standard.

## 4.3 Considerations under clause 4.6

Council's considerations in determining whether to grant consent for development that contravenes a development standard are outlined in Clause 4.6(3) and (4) of NLEP 2012. These considerations are addressed below:

### **Clause 4.6(3)(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

The objectives of Clause 4.3 Height of buildings are listed below along with assessment against the objective of the noncompliance.

*(a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*

The Wickham Master Plan (WMP) places the site within the 'Rail Edge Precinct'. The vision for this precinct is to provide an interface to the emerging commercial core of the Newcastle CBD through mixed use development. The area is undergoing transition from lower scale development to higher density. The desired built form is for taller structures of contemporary design with a respective increase in height limits.

The land located 55 metres to the east of Station Street has a building height limit of 35m and then further east has 45m. Land located on the southern side of the heavy rail corridor, which is approximately 50 metres from of the site has a building height of 90m. Please refer to Figure 3 for details.

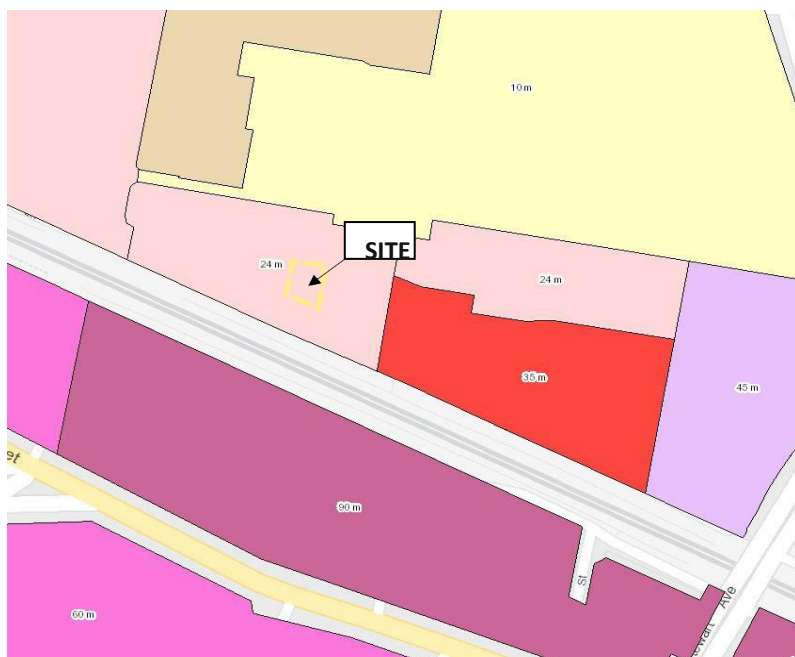


Figure 3: Height of Buildings (NSW ePlanning Spatial Viewer, 2019).

The numeric exceedance of the height limit is caused by the inclusion of the communal roof terrace and lift overrun. The communal roof top terrace is required to meet the communal space controls and if the building had to comply strictly with the 24m height limit that would result in the loss of two units to keep the communal roof structure under the 24m. Retaining those two units is considered necessary to ensure the development is feasible and provides adequate amounts of affordable housing. The height exceedance is negligible in comparison to the positive contribution the development provides to the streetscape which is consistent with the desired future built form, as expressed in the Wickham Master Plan. The height exceedance also has negligible impact when compared to the positive social and economic outcome that comes from providing affordable housing. The alterations that would be required to make the development comply with the height are considered unreasonable and would provide a poor outcome in comparison to the proposal, particularly in terms of the affordable unit yield.

Figure 4 shows the portion of the building over 24m. The roof terrace takes up about 60% of the top floor, with approximately one third of the top floor being covered and exceeding the height limit. The roof terrace provides an architecturally designed outside space which adds to the quality and articulation of the building form. The angled roof has been designed to be an attractive feature and does not dominate the skyline or introduce any bulky elements.

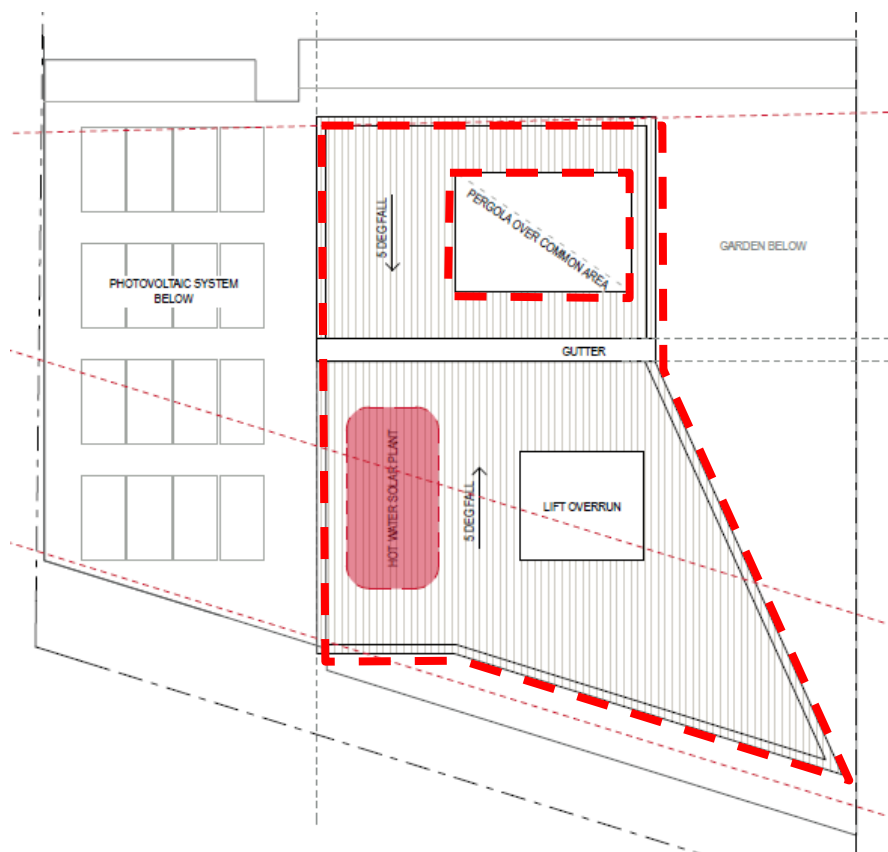


Figure 4: Area dashed in red is above the 24m (CKDS, 2019).

The height increase is not considered to have a detrimental impact on the development of the surrounding area, when considered against the height limits allowed near the site. The impacts of the height exceedance have been mitigated through careful consideration of the placement of the lift overrun and the gardens surrounding the edge of the building. The design prevents unreasonable overshadowing to the surrounding neighbours (discussed further in section (b) below) and prevents residents from direct overlooking from the roof terrace as the gardens would not be a regularly trafficable area.

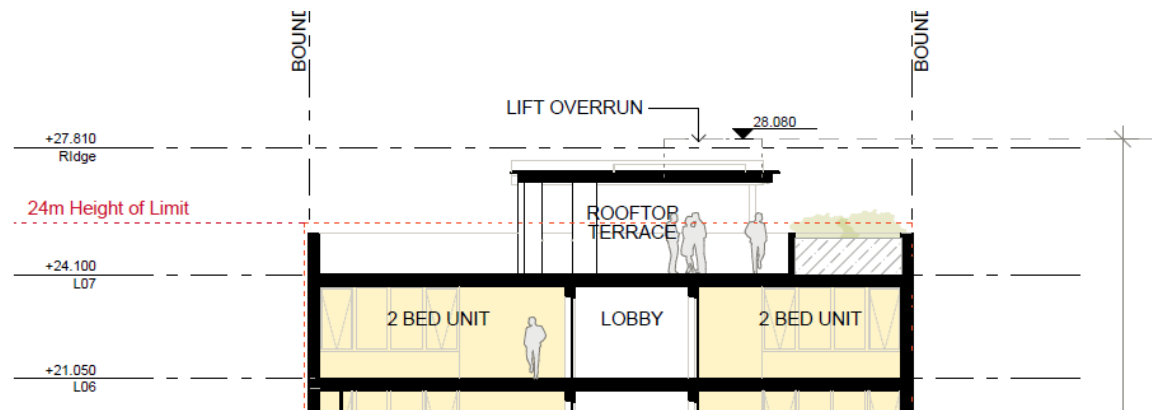


Figure 5: The building structure above 24m contains the top half of the roof to the communal space and the lift overrun viewed from the south, Station Street (CKDS, 2019).

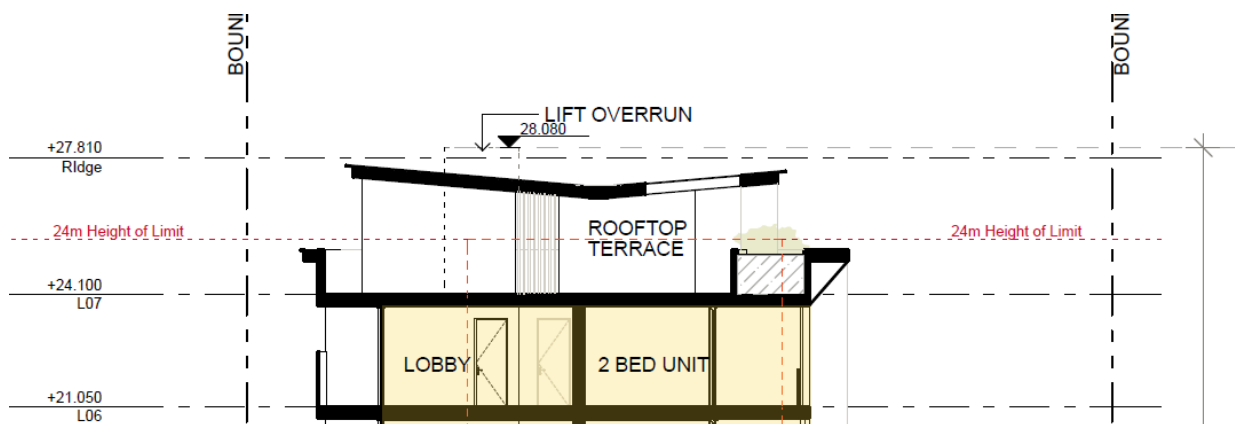


Figure 6: The building structure above 24m contains the top half of the roof to the communal space and the lift overrun viewed from the east (CKDS, 2019).

Further, it is noted that in the Wickham Master Plan the building heights in this area are proposed to increase from the current 25m and 35m heights to 45m and some sites suiting 60m. This would allow a transition to the 90m heights to the south across of the heavy rail line. Whilst these proposed heights have not yet been adopted into the LEP Council has clearly determined that this area has capacity for taller buildings than what is currently permitted under the LEP height provisions. It would be unreasonable to prevent development on this site with a minor height exceedance as proposed when considering the height limits surrounding the site and the likely future height limits proposed under the WMP.

Figures 7 and 8 show massing diagrams which would be compliant with the DCP and ADG with zero side setbacks. Both demonstrate that once 16m in height is reached and the upper level setback is incorporated, the building envelope is not capable of containing units as the floor area left is too small. The proposed building

can accommodate reasonably sized affordable housing units above 16m with little increase in impact to overshadowing and negligible impact for overlooking from the communal space on the top level. It is unreasonable and unnecessary to strictly enforce the building height limit in this instance as the proposed building clearly demonstrates a better outcome to the desired built form in the objective than a compliant design does.

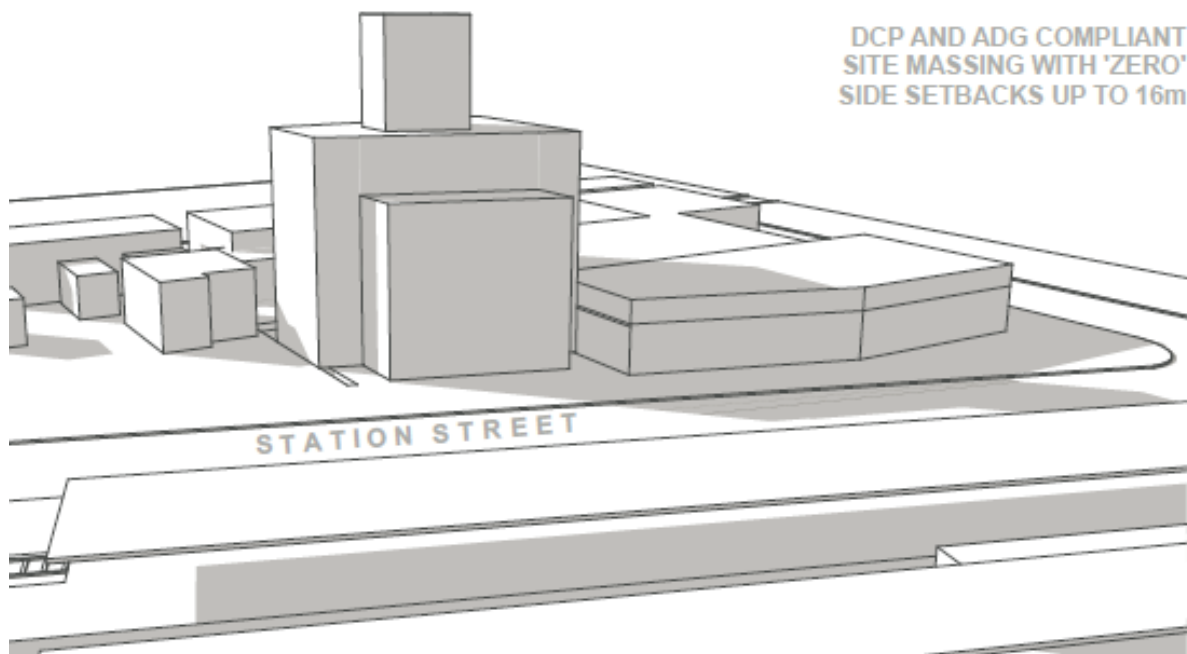


Figure 7: DCP and ADG compliant building with zero side setbacks up to 16m and a total building height of 24m (CKDS, 2019).

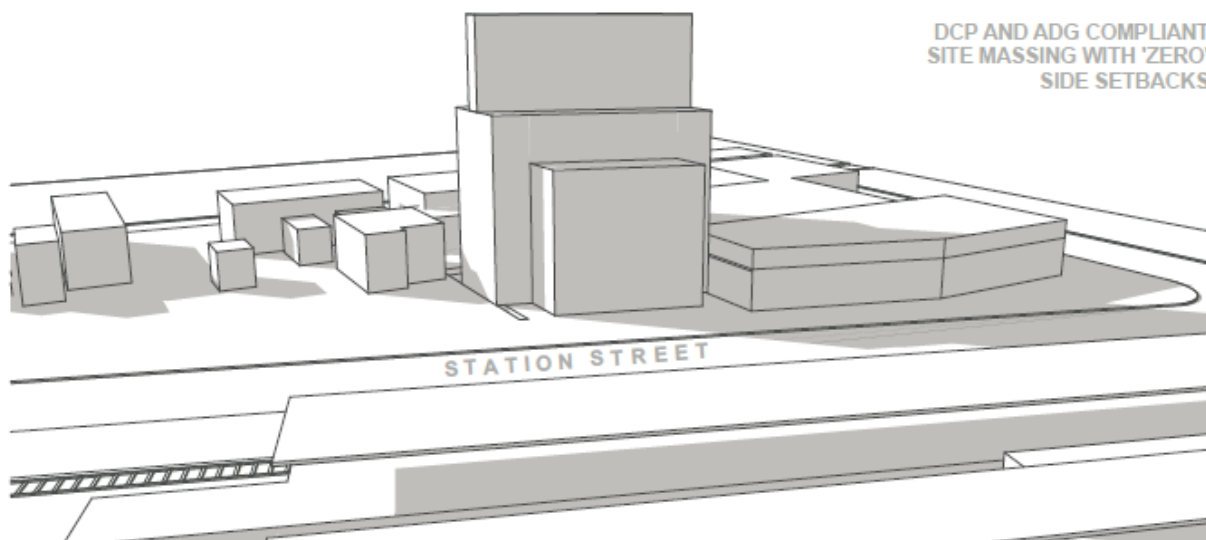


Figure 8: DCP and ADG compliant building with zero side setbacks up to the building height limit of 24m (CKDS, 2019)

*(b) to allow reasonable daylight access to all developments and the public domain.*

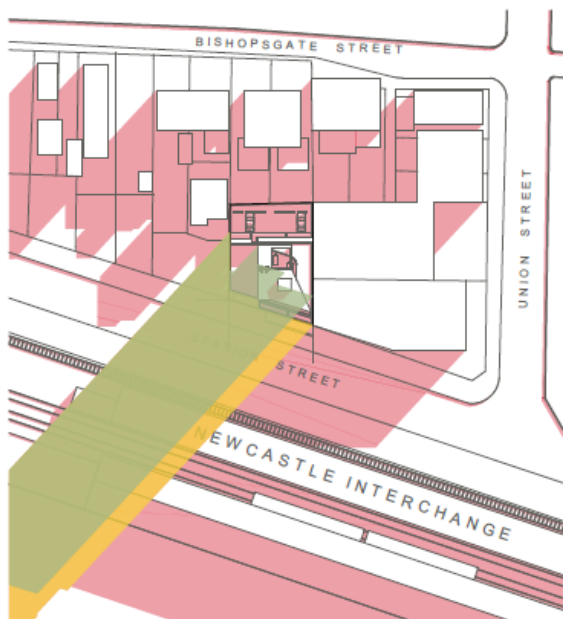
The site has good a north-south axis for orientation, with the southern side adjoining the road and rail corridor. The positioning of the building to the south of the site allows for reasonable daylight and solar access to the proposed development and the existing and future neighbours. Figure 9 shows in orange the shadowing created by the proposed building. The green is the shadowing created if the building was compliant with the DCP and ADG with zero side setbacks to 16m and a 24m building height.

It is demonstrated that June 21 at 9am the building overshadows approximately 30% of 15/80 Bishopgate Street (Lot 2 DP 131687) which does not contain a building currently. On June 21 at 3pm the western neighbour 8 Union Street is overshadowed approximately 40-50% of the existing building roof area and 10-12 Union Streets building is overshadowed approximately 10%. It is noted that 8 Union Street creates its own overshadowing due to its mainly south-east orientation. If these sites were to be developed in the future, it is not considered that the amount of overshadowing proposed would be unreasonable or prohibit development from having good solar access. The overshadowing to the south is considered acceptable as this is upon Station Street and the heavy rail line and it would be unnecessary to require the building to be altered to reduce this.

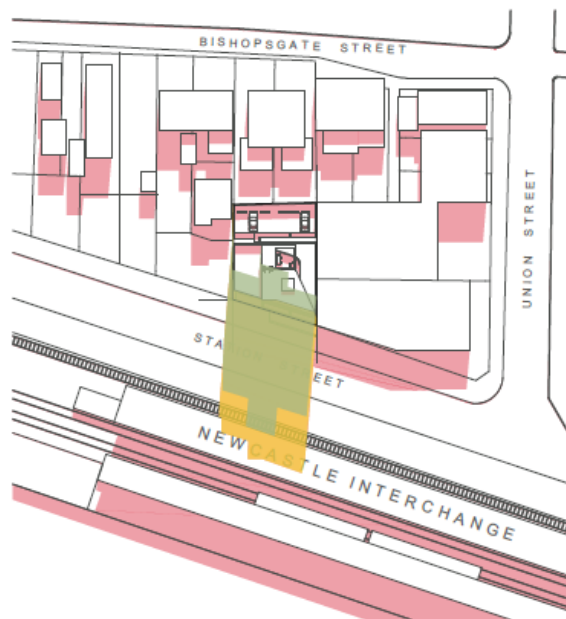
Referring to the Figure 9 shadow diagrams which compare the proposed building to a compliant building, at 9am we can see that the proposed building has slightly wider shadowing over Station Street and the rail line. At 12pm the shadowing extends further over the rail line. At 3pm the shadowing extends further over Station Street and on to the rail line further than a compliant building. The proposed building overshadows the adjacent eastern neighbour a minor amount more than a compliant design, however, that neighbour casts its own shadows regardless of if the proposed building complies or not. The overshadowing is increased in the proposed design though this amount has no adverse impact on surrounding neighbours and its main affects are upon the rail line which is considered acceptable.

Accordingly, the building height proposed in conjunction with the building design is considered to provide a quality form within the existing and emerging urban context. The height has been shown to provide no adverse impact that would warrant the strict compliance with the development standard. Therefore, any requirement for reduction in height is considered unnecessary and unreasonable.

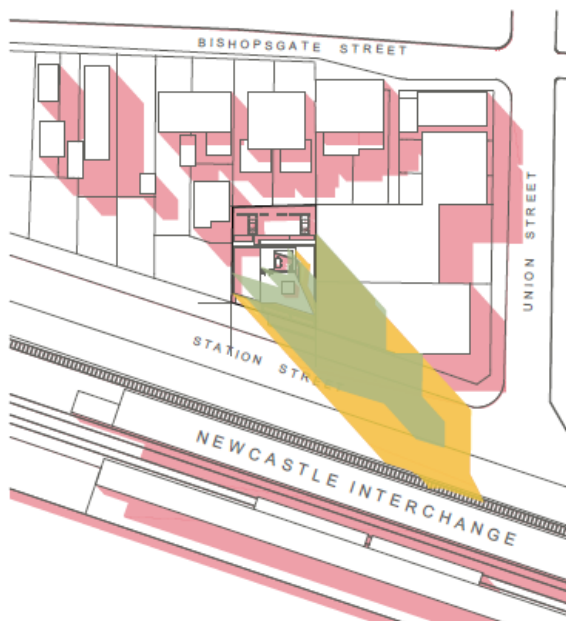




June 21 - 09am (Compliant Overlay)  
SCALE 1:1000 @ A3



June 21 - 12pm (Compliant Overlay)  
SCALE 1:1000 @ A3



June 21 - 15pm (Compliant Overlay)  
SCALE 1:1000 @ A3

Figure 9: Shadow diagrams. orange is the proposed buildings overshadowing and green is a compliant DCP and ADG with zero side setbacks up to 16m building (CKDS, 2019).



**Clause 4.6(3)(b)            There are sufficient environmental planning grounds to justify contravening the development standard**

**Relevant Local Environmental Plan**

Guided by Section 4.15 of the Act, the development is subject to the consent of Newcastle City Councils LEP 2012. The aims of the Newcastle LEP include:

- (1) This Plan aims to make local environmental planning provisions for land in the City of Newcastle in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) The particular aims of this Plan are as follows:*
  - (a) to respect, protect and complement the natural and cultural heritage, the identity and image, and the sense of place of the City of Newcastle,*
  - (b) to conserve and manage the natural and built resources of the City of Newcastle for present and future generations, and to apply the principles of ecologically sustainable development in the City of Newcastle,*
  - (c) to contribute to the economic well being of the community in a socially and environmentally responsible manner and to strengthen the regional position of the Newcastle city centre as a multi-functional and innovative centre that encourages employment and economic growth,*
  - (d) to facilitate a diverse and compatible mix of land uses in and adjacent to the urban centres of the City of Newcastle, to support increased patronage of public transport and help reduce travel demand and private motor vehicle dependency,*
  - (e) to encourage a diversity of housing types in locations that improve access to employment opportunities, public transport, community facilities and services, retail and commercial services,*
  - (f) to facilitate the development of building design excellence appropriate to a regional city.*

The development promotes the economic wellbeing of the community in a socially responsible way, as it provides affordable housing. . This allows low to moderate income earners to live in affordable accommodation near employment and other essential services, such as health and social services, education providers and public transport. This can result in strengthening the economy in the area through the availability of more people for employment.

The building design will complement the transitioning area of Wickham and the Newcastle CBD through its design, supporting the identity and developing character of the area. The design of the building is of a high quality and has considered the emerging and future streetscapes to ensure the building displays excellence.

The development has considered sustainability in its approach to its design, function and materiality. The inclusion of affordable housing is considered a social and economic benefit to the community, particularly those on low to moderate incomes. Its location near a major public transport hub provides access to a range of locations and will encourage active travel rather than further private motor vehicle dependency.

It is considered that the proposal meets the relevant aims of the NLEP 2012.

**Clause 4.6(4)(a)(i)      The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)**

Whether the proposal is in the public interest can be assessed by its compliance with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out (Clause 4.6(4)(a)(ii)).

The assessment contained within Sections 3 and 4 of this report has demonstrated that the proposal is consistent with both the objectives of the standard within Clause 4.3 of the Newcastle LEP 2012 and the objectives for development within the B4 zone.

Accordingly, Council can be satisfied that the development is in the public interest.

**Clause 4.6(4)(b) The concurrence of the Secretary has been obtained**

Further to Council's considerations outlined above, Clause 4.6(4)(b) states that Council must be satisfied that the concurrence of the Secretary has been obtained for the contravention of this development standard.

In this case, concurrence from the Secretary is not applicable according to the planning circular 'Variations to development standards' PS18-003 Issued 21st February 2018. The circular states that:

"All consent authorities may assume the Secretary's concurrence under:

- *Clause 4.6 of a local environmental plan that adopts the Standard Instrument (Local Environmental Plans) Order 2006 or any other provision of an environmental planning instrument to the same effect, or*
- *State Environmental Planning Policy No 1 – Development Standards."*

The circular specifically states that:

*The Secretary's concurrence may not be assumed by a delegate of council if:*

- *the development contravenes a numerical standard by greater than 10%; or*
- *the variation is to a non-numerical standard.*

*This restriction does not apply to decisions made by independent hearing and assessment panels, formally known as local planning panels, who exercise consent authority functions on behalf of councils, but are not legally delegates of the council (see section 231, to be renumbered 4.8 from 1 March 2018). The purpose of the restriction on assumed concurrence for variations of numerical and nonnumerical standards applying to delegates is to ensure that variations of this nature are considered by the council or its independent hearing and assessment panel and that they are subject to greater public scrutiny than decisions made by council staff under delegation. In all other circumstances, delegates of a consent authority may assume the Secretary's concurrence in accordance with the attached written notice.*

As the development is to be approved by the Regional Planning Panel (the RPP) the developments contravention of the building height will be considered by the RPP rather than the Secretary. Therefore, concurrence of the Secretary is not required.



**Clause 4.6(5)(a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning**

There are no significant matters for State or regional environmental planning that will be affected by the contravention of this development standard for this development.

**Clause 4.6(5)(b) The public benefit of maintaining the development standard**

The public will gain no benefit from the insistence on the maintenance of the development standard in this instance.

If the development standard was to be maintained, the proposal would need to reduce by one residential floor in order to still accommodate the rooftop communal area. A loss of a residential floor would reduce the number of units remaining to 14, which would result in the proposal being contractually unfeasible.

The Newcastle Affordable Living Plan 2018 identifies the need for supply of quality affordable housing. The plan expects that growth in single and couple only households is likely to continue and predicts the need for around 16,800 new dwellings by 2036. The plan identifies that housing stock in Newcastle is largely built for families (3+ bedrooms) and that one and two bedroom dwellings are needed to meet the demands of growing single and couple households. The development proposal meets this demand providing affordable housing to low and moderate income earners who need to live in close proximity to the CBD in order to have access to employment, services and the public transport system. The units are one and two bedrooms in size, providing for singles, couples or small families.

Whilst the building does exceed the building height, the exceedance is not considered to impact the surrounding lots and existing developments any more so than building to the 24m height limit. The height is exceeded by the roofed communal open space area and the lift overrun. The communal area is generally open and not an enclosed structure that would cause unacceptable issues of overshadowing or overlooking. The shadow diagrams demonstrate the shadowing is primarily over the rail corridor as that is directly south of the proposal. The neighbouring eastern and western properties are not overshadowed for an unreasonable time of day. Overlooking has been mitigated by placing the rooftop gardens around the edge of the building preventing the ability for residents to look directly into neighbouring properties from above. This also retains a buffer from neighbouring

buildings which may be built in the future adjacent from having common areas directly abutting each other with no physical separation.

It is considered that the public will benefit in a number of ways by this development and that the height exceedance is negligible in comparison. The provision of affordable housing in location central to employment and public transport will benefit the public who need access to this form of housing. It is not considered that the neighbouring properties will be more affected than if the development was to be built to the 24m height.

It is noted that no submissions from the public were made during this applications notification period.

The development benefits the public through its consistency with the objectives of B4 zoning, as well as the matters described above. This is also consistent with the objectives of the EPA Act.



## 5 Conclusion

The relevant considerations of Clause 4.6 have been discussed above, and support contravention of the development standard for this instance. This report has systematically addressed the matters required to be demonstrated by sub clause (3), and satisfied the considerations required to be made by Council under Clause 4.6(4)(a)(i). The deviation from the prescribed building heights is consistent with the zone objectives and the objectives of the development standard in Clause 4.3(1), and Council may be satisfied that it is in the public interest pursuant to clause 4.6(4)(a)(ii).

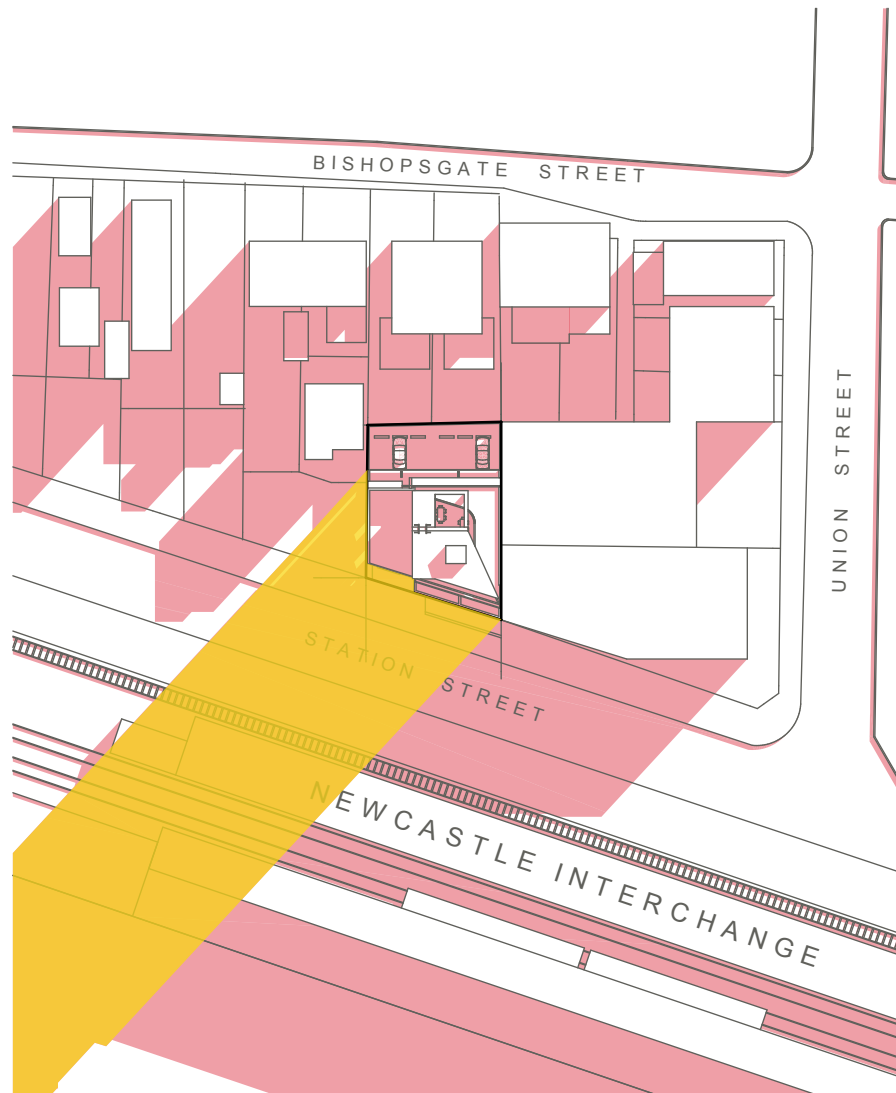
In accordance with the requirements of sub Clause 4.6(4), development consent may be granted for the proposed development.




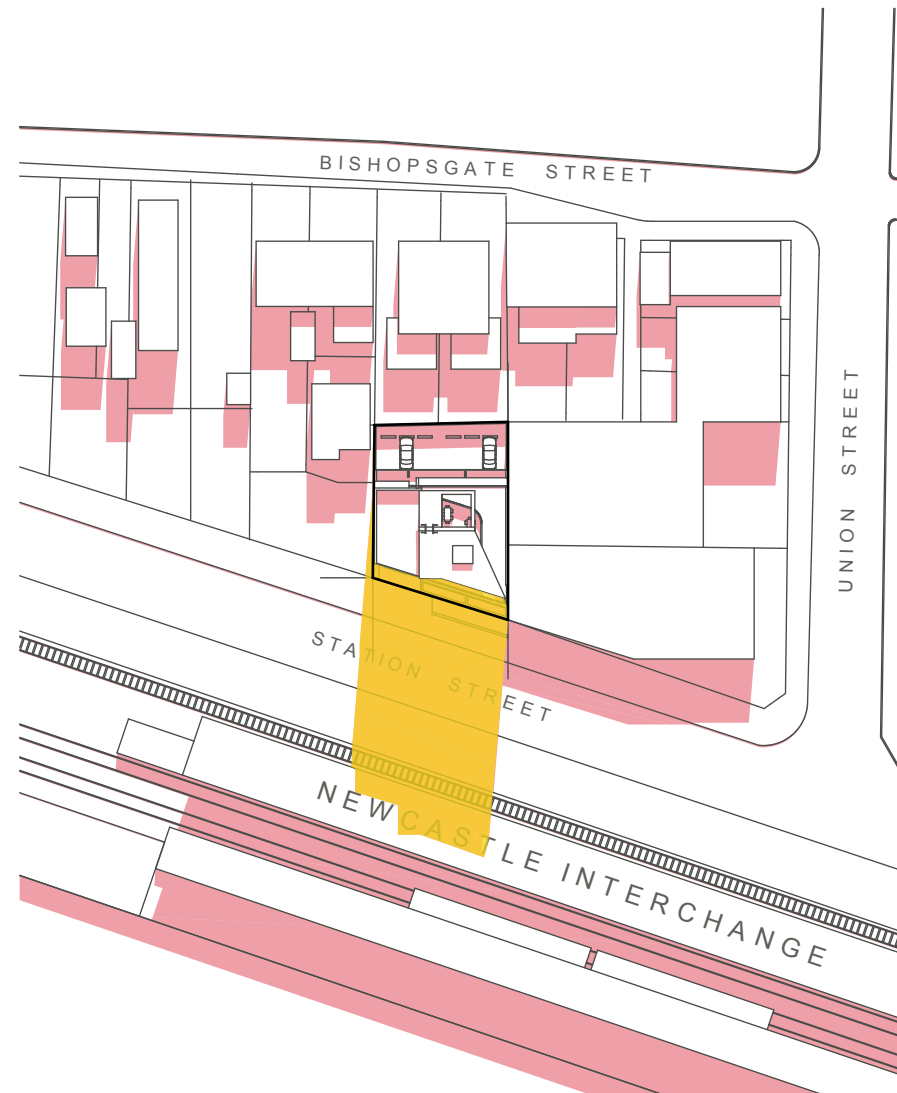
## Appendices


### Appendix A – Shadow Diagrams, CKDS dated 30.10.2019

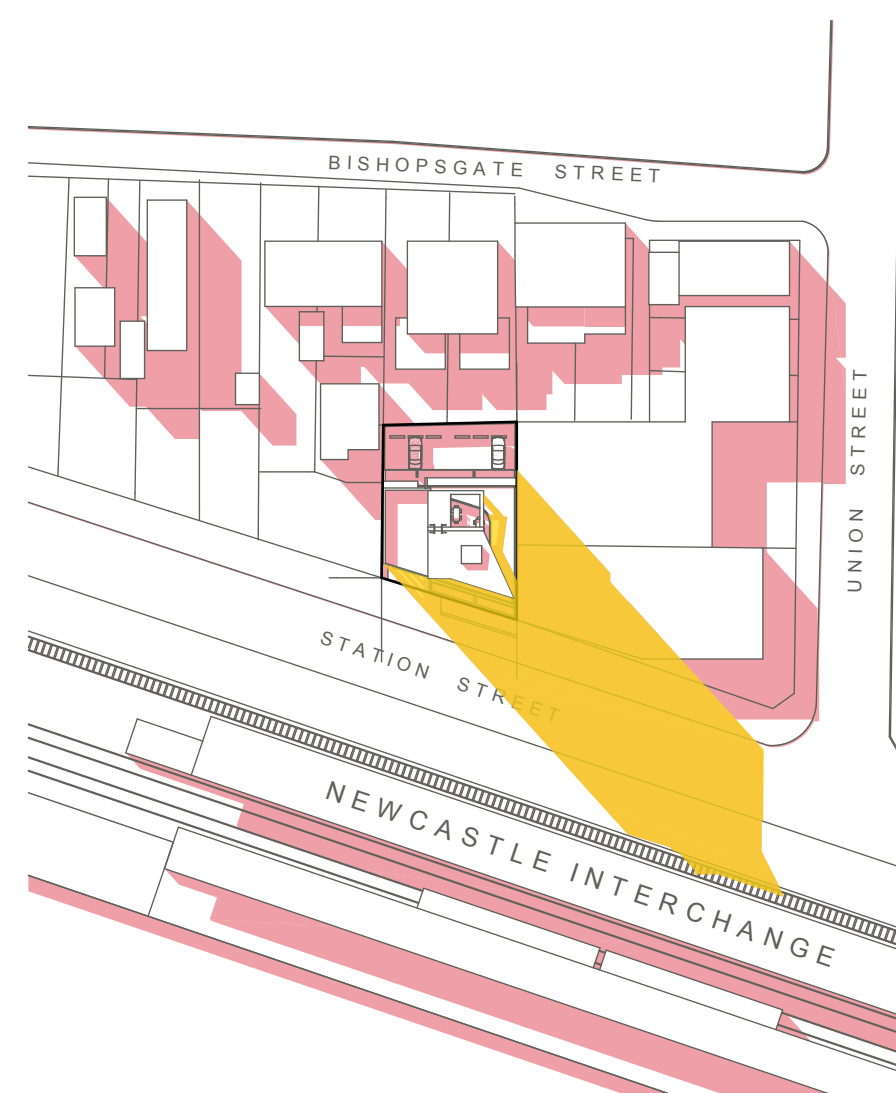






**June 21 - 09am**  
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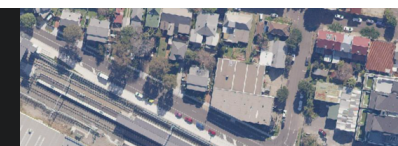



**June 21 - 12pm**  
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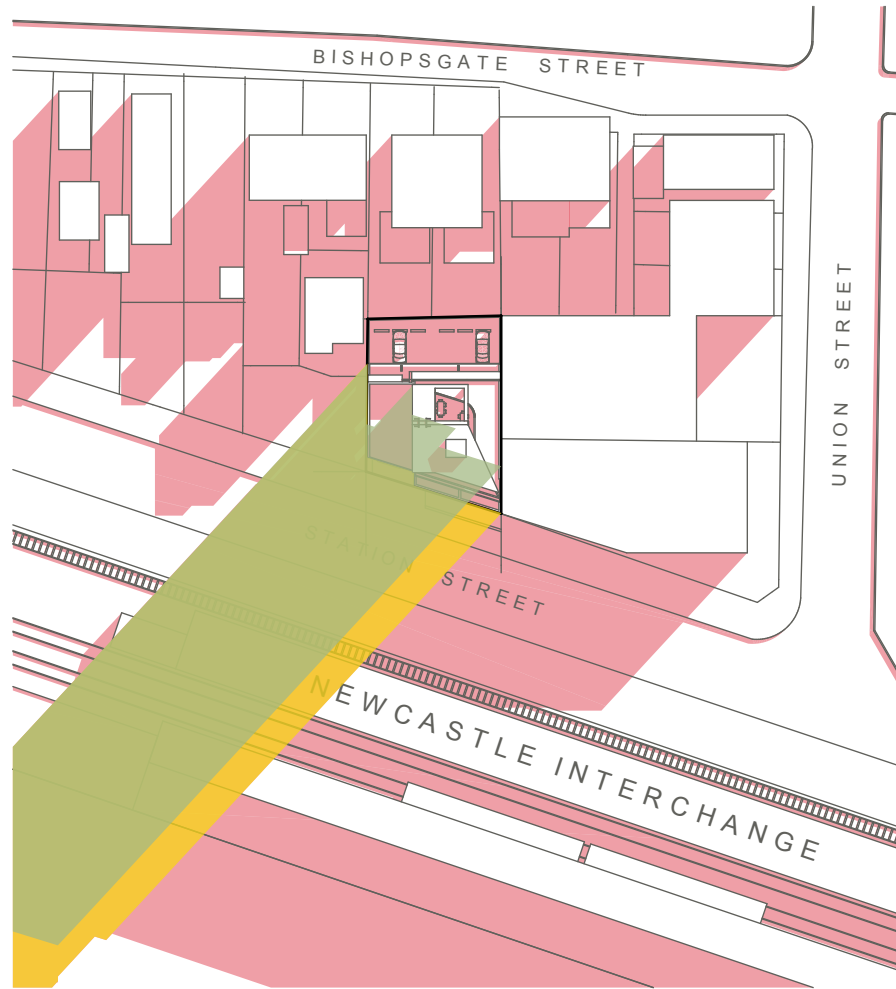



**June 21 - 15pm**  
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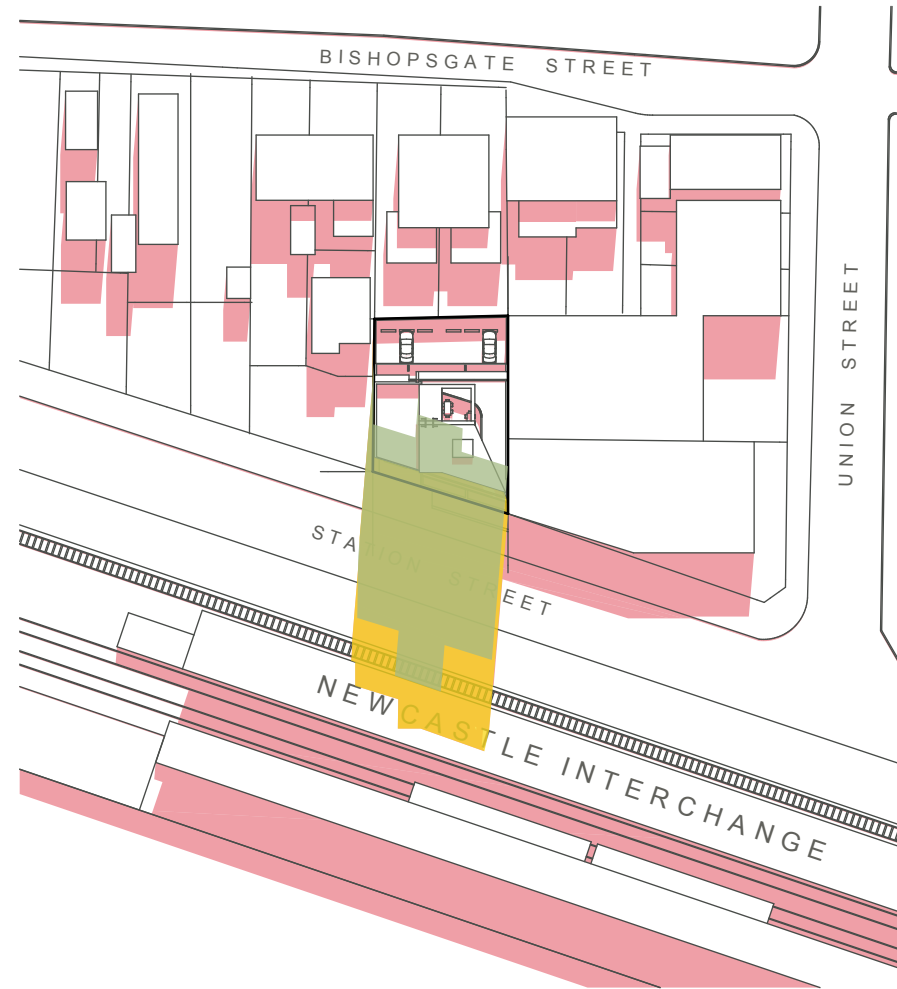
Development Application - COUNCIL RFI







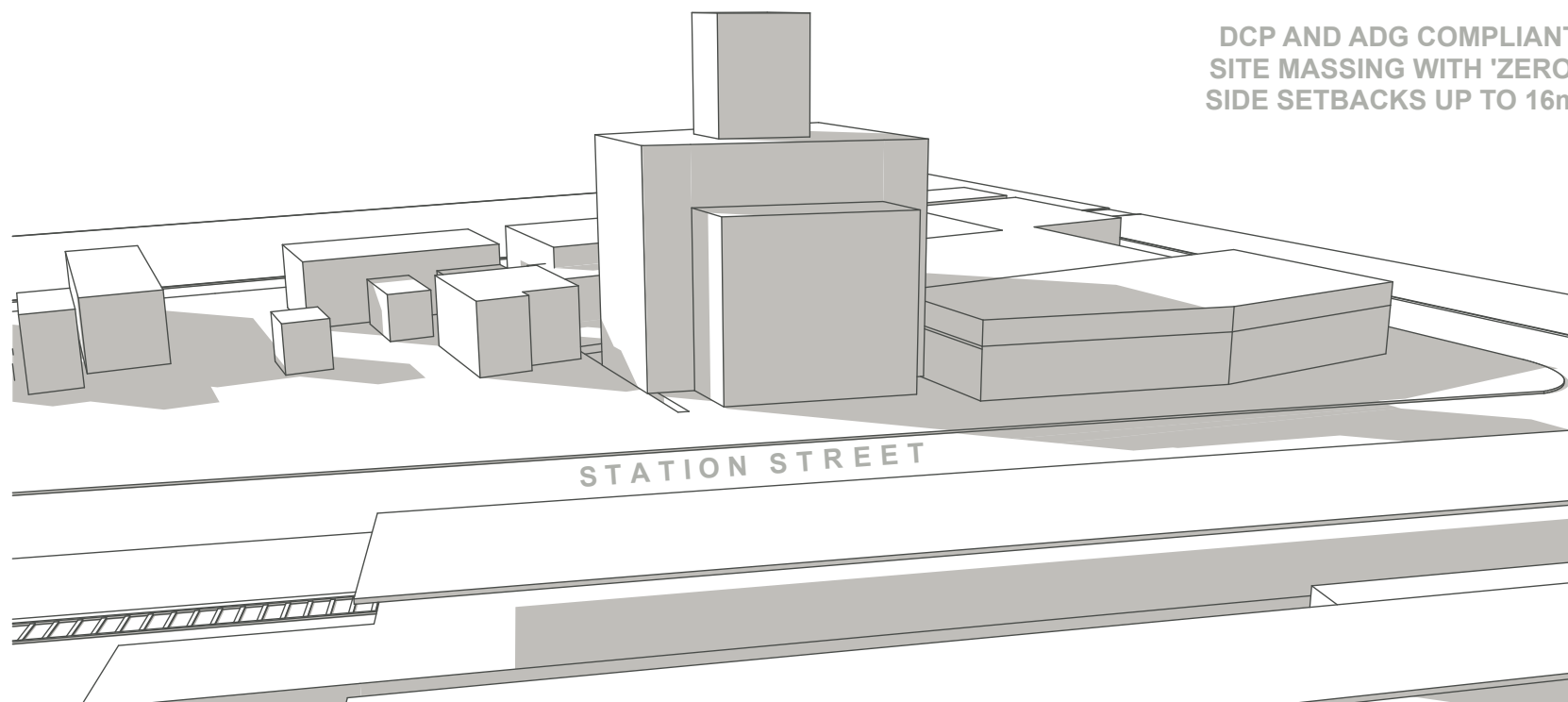
June 21 - 09am (Compliant Overlay)  
SCALE 1:1000 @ A3



June 21 - 12pm (Compliant Overlay)  
SCALE 1:1000 @ A3



June 21 - 15pm (Compliant Overlay)  
SCALE 1:1000 @ A3



DCP AND ADG COMPLIANT  
SITE MASSING WITH 'ZERO'  
SIDE SETBACKS UP TO 16m

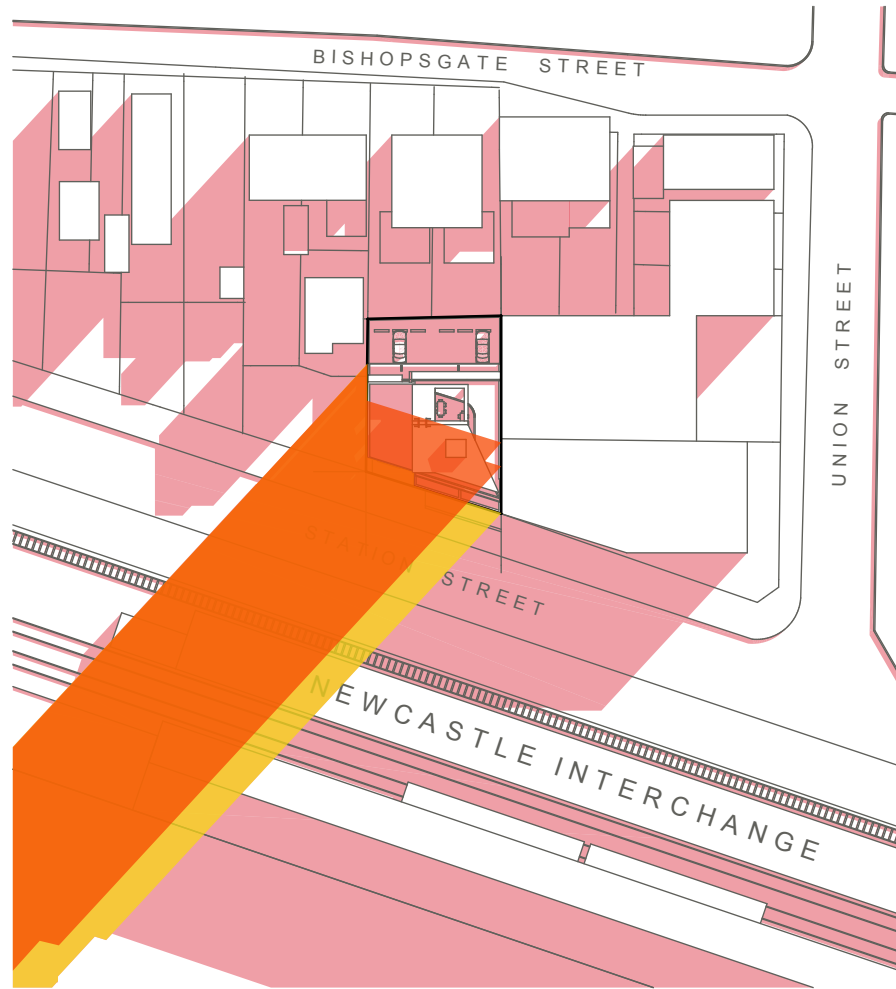
PINK FILL REPRESENTS  
SHADOWS CAST BY  
SURROUNDING EXISTING  
STRUCTURES

GREEN FILL REPRESENTS  
SHADOWS CAST BY  
COMPLIANT SCHEME  
MASSING

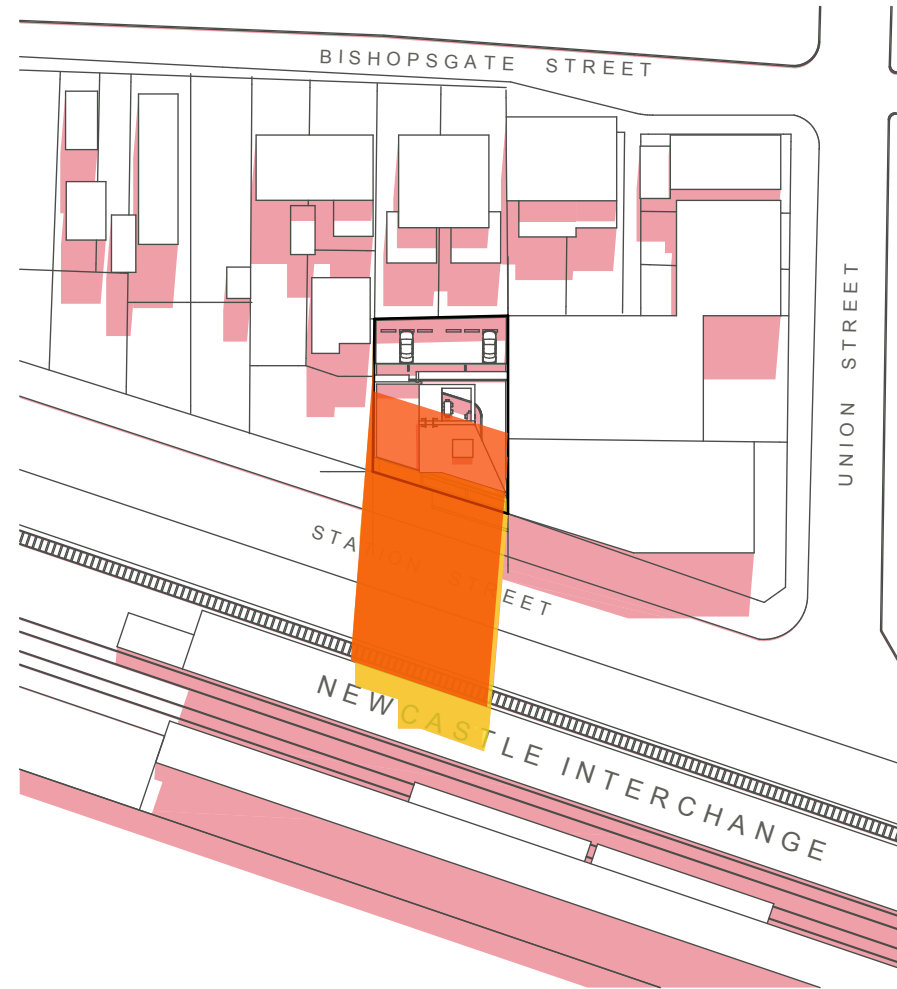
YELLOW FILL REPRESENTS  
SHADOWS CAST BY  
PROPOSED SCHEME







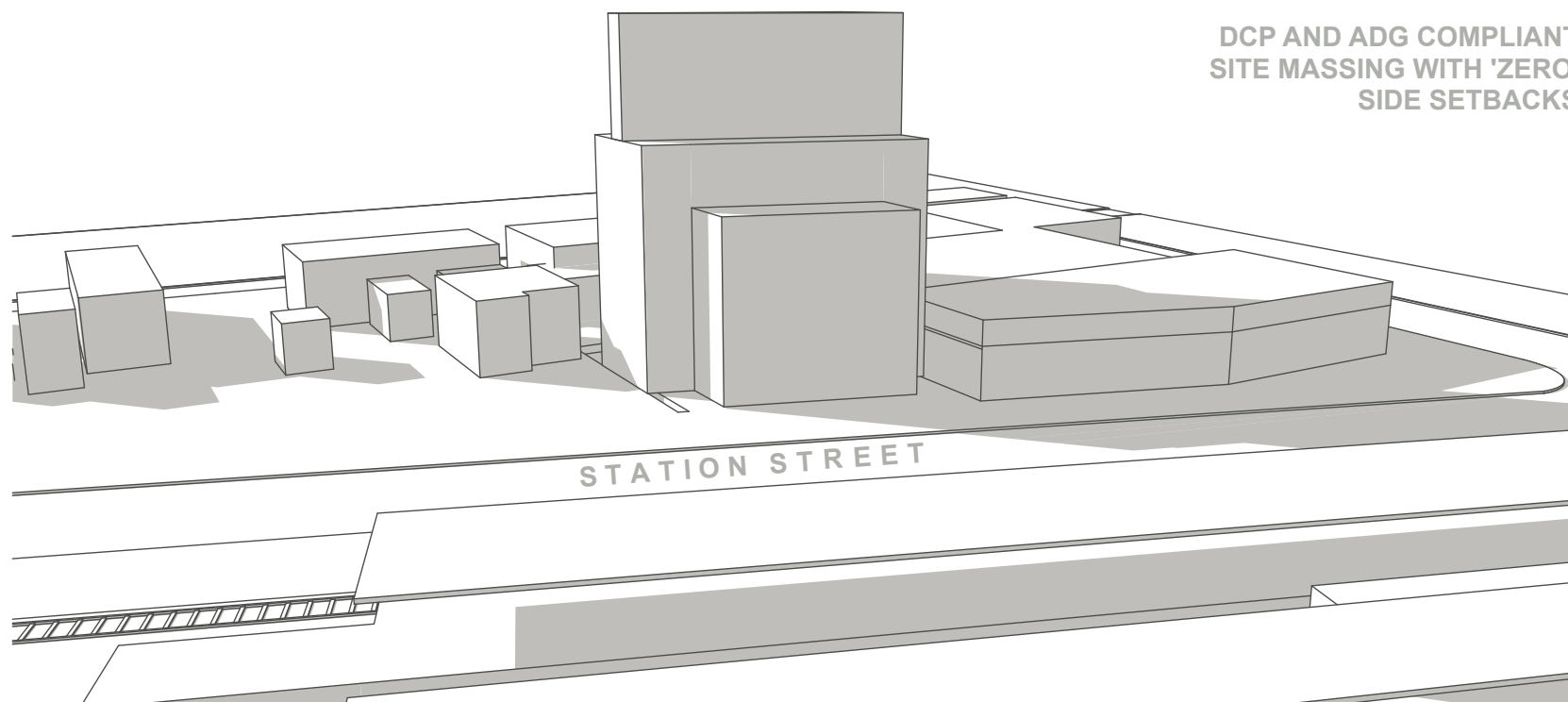
June 21 - 09am ('0' Side Setback)  
SCALE 1:1000 @ A3



June 21 - 12pm ('0' Side Setback)  
SCALE 1:1000 @ A3



June 21 - 15pm ('0' Side Setback)  
SCALE 1:1000 @ A3



DCP AND ADG COMPLIANT  
SITE MASSING WITH 'ZERO'  
SIDE SETBACKS



PINK FILL REPRESENTS  
SHADOWS CAST BY  
SURROUNDING EXISTING  
STRUCTURES



ORANGE FILL REPRESENTS  
SHADOWS CAST BY  
COMPLIANT SCHEME  
MASSING WITH 'ZERO' SIDE  
SETBACKS



YELLOW FILL REPRESENTS  
SHADOWS CAST BY  
PROPOSED SCHEME